

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

**DAVID J. ROBINSON,**

***Plaintiff***

**v.**

**JO MILLER, et al.,**

***Defendants***

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

***No. 2:11-cv-56-JHR***

***MEMORANDUM DECISION ON MOTION FOR SUBSTITUTION OF PARTIES***

The plaintiff moves pursuant to Fed. R. Civ. P. 25(a) and (c) to substitute Jo Miller as a named defendant for Herbert Miller, on the basis of her status as nominated personal representative of the estate of Herbert Miller, a former named defendant who died on August 10, 2011. Plaintiff's Motion Pursuant to F.R.Civ.P. 25 for Substitution of Parties, or in the Alternative, for Enlargement of Time to Permit Identification of Proper Parties for Substitution and Filing of Motion for Substitution of Parties ("Motion") (Docket No. 94). Defendant Jo Miller opposes the motion, Defendant's Response to Plaintiff's Motion to Substitute Parties ("Opposition") (Docket No. 104), which I now deny.

The defendants filed a notice on August 10, 2011, which states, in its entirety: "In accordance with Federal Rule of Civil Procedure 25(a) Defendant Jo Miller notes the death during the pendency of this action of Defendant Herbert A. Miller on August 10, 2011." Defendants' Statement Noting Death of Party (Docket No. 40). Jo Miller apparently takes the position that Counts V, VI, and VIII of the First Amended Complaint, which are asserted against Herbert Miller, do not survive his death. See Rule 25(a)(2) (requiring only that the death of the

party be noted on the record). Not surprisingly, the plaintiff takes the position that these claims do survive Herbert Miller's death and that the notice filed by Jo Miller, therefore, fails to comply with the applicable subsection of the rule, Rule 25(a)(1).

However, the plaintiff adds that substitution "is relevant to only Count VIII of the Amended Complaint." Motion at 3. By an opinion of this date, I have granted the defendant's motion to dismiss that count. Accordingly, the motion for substitution is **DENIED**.<sup>1</sup>

Dated this 31<sup>st</sup> day of January, 2012.

/s/ John H. Rich III  
John H. Rich III  
United States Magistrate Judge

---

<sup>1</sup> The defendant's contentions that the motion should be denied because "the Court has modified the caption in this case in its orders to reflect the fact that Mr. Miller is no longer a defendant[.]" Opposition at 1, and that the plaintiff is barred by undue delay from bringing his motion, *id.* at 2-3, are without merit.